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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation and maintenance of corporations, is to deal with members of the bar, exclusively.

Among the taxes not previously imposed, affecting corporations active in many states, which became operative in 1934, are the following:

Iowa—A Business (Income) Tax on Corporations and a new Retail Sales Tax were imposed.

Kentucky—A new Gross Receipts Tax law was enacted.

Louisiana—The Franchise Tax law was amended by the Legislature and the Income Tax law was adopted by the voters at the November election.

Missouri—A Retailers' Occupation or Sales Tax imposed.

New Mexico—A new Gross Income Tax law became operative.

Ohio—Retail Sales Tax, approved December 13, 1934, and operative as to sales from January 1, 1935, to December 31, 1935.

West Virginia—A new Retail Sales (Consumers') Tax law became effective and a surtax was imposed in connection with the Gross Income Tax.

New York

New York Domestic Corporations—A certificate designating the Secretary of State as agent for the service of process was required of such corporations on or before January 1, 1935.

New York City—The Retail Sales Tax, Business Tax, Income Tax, Public Utility Taxes and the Estate Tax were imposed by local law.

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for January

The Growth of Corporation Law

EDWARD ROESKEN

In Blackstone's four *"Commentaries on the Laws of England,"* the subject of corporations and the law governing them receives attention to the extent of approximately fifteen pages.

For centuries before Blackstone's time (1723-1780), reaching back to the days of early Rome, when organizations having many of the attributes of present day corporations are found to have been in existence, little was recorded on the subject of corporations—doubtless because they were so few in number, and also for the reason that their affairs were regulated by custom rather than by statute and court decision.

It has been only in the last century—the "Century of Progress"—that corporations have been chartered in ever-increasing numbers, and have intensively carried on their activities beyond the limits of the state of creation to surrounding states, to neighboring countries, to foreign lands, and, in many instances, around the world.

The growth of the legal literature following upon such far-flung activities has kept pace with the mounting volume of newly-created corporations, until today, by contrast with Sir William Blackstone's fifteen pages, this literature is so great that if the text of statutes relating to corporations and the decisions and rulings on corporate subjects could be collected into separate volumes under one roof, these would fill a library of no small proportions. An idea of the distance we have travelled since Blackstone lectured before the students at Oxford University and incorporated his lectures in the *"Commentaries,"* may be obtained by considering the fact that a modern loose-leaf service on corporation *taxes* alone fills a shelf-space of *twelve feet.* Other subjects affecting corporate activity, if treated as thoroughly, would no doubt occupy a proportionately large amount of shelf-room. Decisons of the state and Federal courts involving questions concerning the creation of corporations, their rights, duties and government, are rendered each business day. Regulations of state tax commissions and public utility boards, attorney general opinions and rulings by other state officials also add daily to the ever-expanding body of writings pertaining to corporation law. Thus, the legal literature relating to corporations gradually grows, aiding the attorney more and more in the guidance of his corporation clients.

Domestic Corporations

California.

No stockholders' double liability when in bankruptcy proceedings a composition is made by the corporation with its creditors. This is a proceeding under the former so-called stockholders' double liability provisions of the California Civil Code (now repealed) to recover from certain stockholders 75¢ on the dollar after, in the course of involuntary bankruptcy proceedings, a composition had been made with creditors of 25 cents on the dollar. Judgment below for plaintiff. The California District Court of Appeal, First District, Division 1, reverses. The creditors whose claims are here involved were parties to the composition agreement. The court says "there is a distinction between a discharge in bankruptcy and a composition settlement and the consequences which flow therefrom. A composition partakes of the nature of a contract, in a measure superseding and outside of the bankruptcy proceeding." The indebtedness was extinguished by the settlement; there can be but one satisfaction of the debt; there was no debt remaining on which the alleged statutory liability could be based. Certain cases cited were held not to be in point. "Neither one involved the question of stockholders' liability, but were based upon the common-law liability of stockholders to the corporation for the balance due the corporation as unpaid subscriptions to the stock. The amount due on unpaid subscriptions to the capital stock of corporations constitutes, upon the insolvency of a corporation, a fund for the benefit of corporate creditors. This liability is one separate and apart from the statutory liability of stockholders." *Keeling Corporation, Limited, v. Pacific Products, Inc.*, 31 P. (2d) 1043. Humphrey, Searls, Doyle and MacMillan and Torregano & Stark, all of San Francisco, for appellant. Goodman, Bachrack & Brownstone, of San Francisco (George M. Naus, of San Francisco, of counsel), for respondent.

Equity receiver conducting business of corporation must comply with state laws applicable to such business. Section 65 of the United States Judicial Code (28 USCA Sec. 124) so provides; but, here, a United States District Court ordered that the receiver for an oil and refining company need not procure the license or post the bond prescribed by a California statute relating to "distributors" of motor fuel oil. The United States Circuit Court of Appeals, Ninth Circuit, reverses, holding that the District Court was without power to enter the order referred to. It is said that no doubt in the present instance the court will guard the rights of the state (as to the payment of taxes, etc.), but—"Nevertheless, the fact remains that the policy and purposes of the state are being thwarted. If the receiver in the instant case may carry on the business of the corporation without complying with the state law, other receivers appointed by federal courts may do likewise; and considering the number of

'friendly receiverships' which find their way into the federal courts, it is easy to foresee the consequences." *State of California v. Gillis*, 69 F. (2d) 746. U. S. Webb, Atty. Gen., and H. H. Linney, Deputy Atty. Gen., for the State of California. Goudge, Robinson & Hughes and Ernest C. Carman, both of Los Angeles, for appellee.

The defense of ultra vires. The California District Court of Appeal, Second District, Division 2, says, here: "In view of the express powers contained in its (the corporation's) articles to make any contract with any person for any lawful purpose, and to exercise any power for the purpose of attaining and furthering its objects which a natural person was authorized to do under the law in connection with the implied powers conferred by law and above quoted, it is clear that the charge of ultra vires must fall. Furthermore, the defense of ultra vires is no longer looked upon by the courts with favor, particularly when relied upon as a shield to escape liability. Where the questioned contract of a corporation is neither malum in se nor malum prohibitum, the doctrine of ultra vires is limited in scope and application, and the contract should be enforced against the corporation when it has received the consideration or the benefits therefrom. *Rabbitt v. Union Indemnity Co. et al.*, 35 P. (2d) 1066. Appearances: Elmer P. Bromley and H. E. Lindersmith, both of Los Angeles; Kidd, Schell & Delamer, of Los Angeles.

Florida.

On inability of corporation to sue in state courts if required fees and reports are in default. Chapter 14677, Florida Laws of 1931, provides that a corporation failing for six months to comply with the provisions of the act in regard to payment of fees and filing of reports shall not be permitted to maintain any action in any court of the state until all fees are paid and all reports filed. Plaintiff corporation, which brought this action, was in default in respect of its fees and reports, but prevailed below as the matter of the default was not advanced. The Supreme Court of Florida, Division A, reverses. The court says that a corporation filing suit is not required to affirmatively plead its compliance with Chapter 14677. Judgment rendered for a corporation in default is not utterly void but is voidable and on the matter of default being called to the court's attention it is its duty to give effect to the statute by arresting its judgment or withholding its execution until the provisions of the statute have been complied with and the right to sue revived. Failure of a defendant to plead the suspension of the corporation plaintiff's right to sue prior to entry of judgment in its favor is immaterial. It is also immaterial whether the cause of action sued on arose before or after Chapter 14677 was enacted. *Diaz v. Parkland Estates*, 154 So. 199. S. S. Sandford and T. E. Lucas, both of Tampa, for plaintiff in error. Altman & Cooper, of Tampa, for defendant in error.

Kansas.

Directors' liability for acts of officers of corporation. Action by receiver of a corporation to recover from directors certain amounts on account of expenditures made by officers on behalf of the corporation which were alleged to be ultra vires and caused loss. Judgment below for defendants. The Supreme Court of Kansas affirms. The court says: "It will be noted that the allegation of the petition with reference to knowledge of the directors of the alleged unauthorized transactions is that they 'knew or should have known' about them. This amounts to a contention that a director in an ordinary corporation is charged with knowledge of its affairs equivalent to that with which a bank director is charged by R. S. 9-163. Such is not the rule, however, as to the liability of directors in a corporation such as that under consideration here. * * * The petition does not allege that the defendants had had actual knowledge of the transactions or that defendants profited by them. A director of a corporation is not charged with knowledge of what the officers in charge of the company are doing. To so hold would be to go far beyond any rule of liability that has been called to our attention." *Noll v. Boyle et al.*, 36 P. (2d) 330. D. W. Eaton, of Wichita, for appellant. R. R. Vermilion, Earle W. Evans, J. G. Carey, W. F. Lilleston, Geo. C. Spradling, Henry V. Gott, and George Stallwitz, all of Wichita, for appellee Dwight Smith. George Siefkin, Sidney L. Foulston, Lester L. Morris, George B. Powers, Carl T. Smith, and C. H. Morris, all of Wichita, for appellee Robert C. Foulston.

Missouri.

Implied powers of president of corporation. A piano was sold on the installment plan, by a corporation, the purchaser executing "a contract in the nature of a mortgage to secure the purchase price." The president of the corporation, after several partial payments had been made, assigned the contract to a corporation to which his corporation was indebted for pianos purchased. The first company went into bankruptcy. The assignee of the contract brought this action in replevin against the buyer of the piano. The president referred to, was likewise treasurer and general manager of his corporation. The court below rendered judgment for defendant; on appeal, the Springfield Court of Appeals reverses and remands on the ground that an instruction of the trial court was erroneous "because it imposes upon the plaintiff the burden of proving that the board of directors of the Smith-Medcalf Company authorized the assignment of the contract in question by an order in writing, or that they ratified the act of the president or had notice thereof at the time of the assignment." The court says: "The law is that the president and general manager of a trading corporation is vested with authority to perform all acts of an ordinary nature, which by usage are incident to his office, and as to matters which arise in the

usual course of business he may bind the corporation without any special resolution or authority from the board of directors." Here, it was a fair inference that the assignee "dealt with the president as one having authority in the premises"—hence the error. *Bacon Piano Co. v. Wilson*, 62 S. W. (2d) 774. W. G. Bray, of Senath, and McKay & Peal, of Caruthersville, for appellant. Sharon J. Pate and Sam J. Corbett, both of Caruthersville, for respondent.

Montana.

On extension of life of a corporation. Chapter 7, Montana Laws of 1931, makes provision for the extension of the term of existence of a Montana corporation whose term "has expired or is about to expire." Chapter 38 of the Laws of 1931, relates in part to the amendment of a corporation's articles of incorporation which includes "extending its term of existence within the limits provided by law"; this later act, in terms, repeals "all Acts and parts of Acts in conflict herewith." This is a statutory action by the State in *quo warranto* against a corporation which had taken the steps necessary to extend its corporate existence under the provisions of Chapter 7, challenging the legal existence of the corporation—after the extension—on ground that Chapter 7 is unconstitutional—because of alleged inadequate or defective title, and, additionally, is void and of no force and effect, as it was repealed by Chapter 38 because in conflict therewith. The Supreme Court of Montana finds the title to Act No. 7 sufficient, and holds that Act No. 7 was not repealed by Act No. 38, there being no conflict between the two. *State ex rel. Nagle, Atty. Gen. v. The Leader Company et al.*, decided October 19, 1934, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 124221. R. T. Nagle, Atty. Gen. and Oscar A. Provost, Spec. Asst. Atty. Gen., for plaintiff. Freeman, Thelen & Freeman, of Great Falls, and Cooper, Stephenson & Hoover, of Great Falls, for defendant.

New Jersey.

Power of New Jersey corporation to purchase its own stock. The United States District Court, District of New Jersey, says: "Under the New Jersey Corporation Act (2 Comp. St. N. J. 1910, p. 1595 et seq., Sec. 1 et seq. and Comp. St. Supp. N. J. Sec. 47-3 et seq.), there is an implied grant of power to corporations to purchase shares of their own capital stock, whenever such purchase is required for legitimate corporate purposes." Here, however, says the court, the corporation which had purchased a few shares of its own stock but had failed to pay therefor, was hopelessly insolvent at the time of the purchase; it subsequently went into bankruptcy; and the court sees no error in the finding of the referee that the stock purchase was not made by the corporation for legitimate corporate purposes and affirms his order denying the vendor's petition that the trustee

in bankruptcy be directed to pay her claim out of the proceeds of the sale of certain property of the bankrupt. *In re Morrisville Concrete Products Co.*, 6 F. Supp. 465. Homan, Buchanan & Smith, of Trenton, N. J., for petitioner. Samuel D. Lenox, of Trenton, N. J., for trustee.

New York.

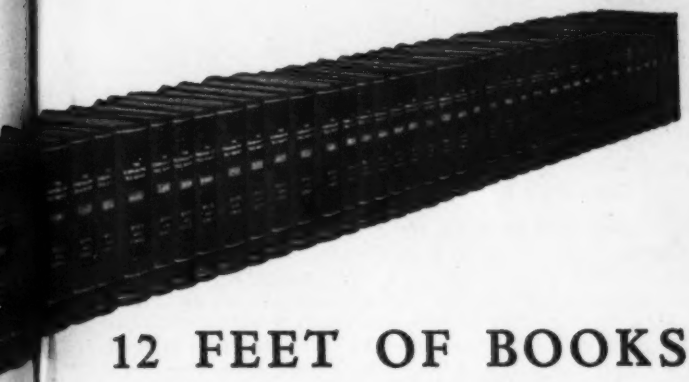
Suits by and against dissolved corporation. Section 29 of the New York General Corporation Law prior to its amendment by Chapter 552, Laws of 1932, provided that on the dissolution of a corporation its directors, unless other persons were designated by law or by a court of competent jurisdiction, were to be trustees for the purpose of administering and marshalling its property for the benefit of creditors and stockholders, and for those purposes "such trustees shall have power in the corporate name by one or more of their number thereunto designated to transfer and convey its property, and may sue and be sued in such name." As amended, and as now written, the section provides that "Upon the dissolution of a corporation for any cause and whether voluntary or involuntary its corporate existence shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations, collecting and distributing its assets and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name." The New York Supreme Court, Appellate Division, Third Department, in affirming the order below, says: "If the amendment provides a remedy for the redress of a wrong or the enforcement of a right where none before existed, it is prospective. If the right to recover existed before and the amendment relates to procedure and merely prescribes a remedy, it is retroactive." And the court holds that "the change is in procedure only and is retroactive" and so, that the corporation for which MacAffer is designated as receiver and successor trustee may be joined with him as one of the plaintiffs in this action though in 1916 it was decided, under the old law, that then the corporation was without capacity to sue. *MacAffer, as Receiver and Successor Trustee, et al. v. Boston & M. R. R.*, 274 N. Y. S. 246. Whalen, McNamee, Creble & Nichols, of Albany (Robert E. Whalen, of Albany, of counsel), for appellant. Frank L. Wiswall, of Albany, for respondents.

Scope of corporation's secretary's powers. Motion to set aside verdict for plaintiff on this action on an alleged contract of employment is denied by the City Court of New York, Bronx County. The court says that "it may be, as the defendant's counsel urges, that by the defendant's by-laws the defendant's secretary was merely a ministerial officer whose duties were limited strictly to the performance of such work as was merely secretarial in character." But

"there was evidence to show that the defendant's secretary's activities were not confined to duties of a clerical nature." And furthermore "it has been held that a by-law of a corporation providing that its secretary should not do anything that was not strictly secretarial in character is of no force as a limitation per se as to a person not a member of the corporation of an authority which, except for the by-law, would be construed as within the apparent scope of the secretary's authority." From *Traitel Marble Co. v. Brown Bros. Inc.*, 144 N. Y. S. 562, 564, the court quotes: "In this State the Court of Appeals has apparently placed the secretary within the category of general officers whose authority is presumed to be as broad as that of the president himself, and has ascribed to each of these officers prima facie authority to do any act which the board of directors could authorize or ratify." *Nathan v. Regent Laundry Service, Inc.*, 274 N. Y. S. 509. Bregman & Bregman, of New York City, for plaintiff. Jacob M. Mandelbaum, of New York City, for defendant.

Liability of corporation for transferring stock certificate bearing forged endorsement. The sequence of events forming the basis of the action here is this: Plaintiff endorsed in pencil a certificate for 100 shares of J. C. Penney Co. Inc. stock, sending it to his brokers as collateral security for the purchase price of certain other stock ordered by him; later the certificate was purchased on the New York Stock Exchange by another brokerage firm for the account of a customer; at the time of such purchase the pencil endorsement had been erased, an ink written forged endorsement having been substituted; the old certificate was presented for transfer, signature being guaranteed, and a new certificate was issued; action by original owner against the corporation for the value of the stock. The trial court dismissed the complaint on the theory that by delivering the endorsed certificate the plaintiff "divested himself of title" thereto, and that by endorsing he authorized his brokers "to sell and transfer." The New York Supreme Court, Appellate Division, First Department, is of opinion that in so holding the court erred, and reverses, saying: "When the certificate was delivered to the J. C. Penney Company's transfer agent for cancellation, it did not bear the endorsement of the plaintiff and consequently it was subject to all outstanding equities in favor of the plaintiff. Therefore J. C. Penney Company, Inc., must be held liable to plaintiff for the value of the certificate on the date of the transfer. In turn the J. C. Penney Company, Inc., is entitled to a judgment over against the United States Fidelity & Guaranty Company canceling the new certificate. Likewise both J. C. Penney Company, Inc., and the United States Fidelity & Guaranty Company are entitled to recover against the Bank of America National Association on the ground that it guaranteed the forged ink endorsement on the certificate." *Mohr v. J. C. Penney Company, Inc.*, and others impleaded, decided Novem-

THE CORPORATION TAX SERVICE —STATE AND LOCAL



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ber 9, 1934. The New York Law Journal, November 27, 1934. Chester B. McLaughlin, of counsel (Benjamin J. Brown with him on the brief; McLaughlin & Stickles, attorneys), for plaintiff-appellant. John B. Butler, Jr. of counsel (Caleb C. Curtis with him on the brief; Gwinn & Pell, attorneys) for J. C. Penney Company, Inc. William J. McArthur, for United States Fidelity & Guaranty Company. Alfred J. L'Heureux, of counsel (Thomas A. Sully with him on the brief; Rumsey & Morgan, attorneys), for The Bank of America National Association. All counsel are of New York City.

Oklahoma.

Creditors of corporation have no right of action against stockholders and directors until after judicial dissolution of corporation. Plaintiffs, here, creditors of a corporation, are seeking to recover as much of a money judgment against the corporation, as remained due and unpaid, from the stockholders (on account of unpaid portion of subscriptions) and from the directors (because of an alleged payment of a dividend from capital when there were debts due creditors). Section 9763, O. S. 1931, provides for the bringing of such suit against directors in the event of the dissolution of the corporation (otherwise, the liability runs to the corporation). It was contended that since the corporation had not been operating for some time there was a practical dissolution and that such a dissolution rather than a judicial dissolution will satisfy the statute. The Supreme Court of Oklahoma finds against the plaintiffs' contention and affirms the decision of the trial court in sustaining the demurrer. *Taylor et al. v. Webber et al.*, 31 P. (2d) 603. W. R. Kerr, of Tulsa, for plaintiffs in error. Frank Ertell, of Claremore, and P. L. Long, of Tulsa, for defendants in error.

Oregon.

Action by holder of voting trust certificate against other stockholders and officers of his corporation for personal damages. Plaintiff, who had deposited his stock in a corporation with voting trustees, alleged that the voting trust agreement was part of a scheme to enrich the defendants (who are also stockholders and officers of the corporation, though some were not parties to the voting trust agreement) and against the best interests of the company. The Supreme Court of Oregon sustains the trial court in dismissing the cause of action. Suit is not on behalf of the corporation but as an individual for damages resulting from alleged depreciation in value of his stock because of the alleged conspiracy, etc. The gravamen of the complaint is injury to the corporation. Recognizing the rule that where the wrong is against the corporation, the cause of action belongs to it, plaintiff "contends that his action is based upon a violation of the voting trust agreement and that, by virtue of such contractual relationship, he may maintain the action

in his own behalf even though there was a direct damage to the corporation." By the terms of the agreement the trustees were bound to vote the stock in such wise as to promote "the best interest of all of the stockholders of said corporation." The court says: "We cannot agree that the instant action is predicated upon a breach of the voting trust agreement. * * * a breach of this voting agreement did not confer upon the plaintiff a right to an individual and direct action, as distinguished from a derivative one, as any loss sustained by plaintiff by reason of the breach was, under the facts alleged, common to all stockholders." *Smith v. Bramwell et al.*, 31 P. (2d) 647. Howard P. Arnest, of Portland (D. V. Kuykendall, of Klamath Falls, on the brief), for appellant. Omar C. Spencer, of Portland (Mark Norris, of Grand Rapids, Mich., and Carey, Hart, Spencer & McCulloch, of Portland, on the brief); Robert F. Maguire, of Portland; Bronaugh, Hamilton, Bynon & Bronaugh, of Portland; and Allen H. McCurtain: for certain respondents, respectively.

Foreign Corporations

Michigan.

Nonqualified foreign corporation, holder in due course, may sue on trade acceptances. A corporation, foreign to Michigan and not qualified to do business in that state, sold for value to another corporation having a like status, certain trade acceptances covering the then unmatured purchase price of a talking moving picture machine sold, in interstate commerce, to a resident of Michigan. Action on the acceptances. The good faith purchase of the paper by the plaintiff was denied but is established, by the appellate court. There was a cross-declaration for damages because of alleged breach of express and implied warranties on the part of the seller of the machine. Judgment below for defendant, with nothing to plaintiff, who appeals. The Supreme Court of Michigan reverses, holding that plaintiff is a holder in due course, as stated, that any claim the purchaser of the machine may have for breach is against the seller of the machine, who was not a party to the action, and that as neither of the two foreign corporations was doing business in Michigan the state's foreign corporation laws are not applicable. Remanded for entry of a judgment for plaintiff. *Manufacturers' Finance Corporation v. Andary's Estate et al.*, 256 N. W. 601. Hudson & Coates, of Sault Ste. Marie, and Butzel, Levin & Winston, of Detroit (Carl L. Whitchurch, and A. J. Levin, both of Detroit, of counsel), for appellant. F. T. McDonald, of Sault Ste. Marie, for appellee.

Minnesota.

Service of summons on foreign steamship company. The defendant here is a Delaware corporation having its principal office and place of business in San Francisco. It is engaged in operating ocean

steamships. It is not licensed to do business in Minnesota, does no business there except to the extent hereinafter noted, has no property in the state, none of its officers or general agents reside there nor has it employees there and it maintains no office or place of business in the state. Summons on behalf of the company was served on an employee of the Travel Bureau of the First National Bank of St. Paul. This Bureau performs the usual functions of such; to the extent of its dealings with the defendant it had no passenger transportation tickets for sale; when a customer seeks transportation on one of defendant's boats, the proper amount to cover is collected, this, less commission, is forwarded to the company's Chicago office, from which point the ticket is sent to the Bureau which delivers it to the customer. Holding that defendant was not doing business in Minnesota of such nature and character as to subject it to the jurisdiction of the state courts and that the attempted service of summons was not due process, the Minnesota Supreme Court reverses the order of the court below denying defendant's motion for an order setting aside the service. *Gloeser v. Dollar S. S. Lines, Inc.*, 256 N. W. 666. J. H. Mulally of St. Paul, for appellant. O'Brien, Horn & Stringer, of St. Paul, for respondent.

South Carolina.

Service of process on and action against domesticated foreign corporation. Action against a corporation foreign to South Carolina, duly licensed to do business in the state. Process was served on behalf of the corporation in Florence County, where, so it was found, it was doing business, on one who was admitted to be its agent. Under the state law the corporation had designated places in two other counties "at which all legal papers may be served on said corporation." Judgment for plaintiff in the Civil Court of Florence County. The Supreme Court of South Carolina affirms. On the questions of the validity of the service and of the jurisdiction of the Florence County court, the court says that "it does not follow that the places so named (Richland and Orangeburg counties) are the only places where papers may be served on such corporation. It will be observed that the word 'may' is used and not 'shall' in the provision above quoted. A domesticated foreign corporation may be served wherever it has a place of business or owns property. The civil court of Florence, in which court this action was commenced, clearly has jurisdiction at the place where the service in question was made, Florence, S. C., and in which county the said agent was served. * * * Under the facts of this case, the consent of the defendant was not necessary in order to give the court jurisdiction in the case." *McLaughlin v. International Harvester Co. of America*, 175 S. E. 810. W. C. Wolfe, of Orangeburg, for appellant. P. H. McEachin, of Florence, for respondent.

Texas.

Attempted service of process on foreign corporation. In an action against a Missouri corporation and a Texas corporation the Texas trial court dismissed the Missouri company from the case for want of service. The Court of Civil Appeals of Texas (Amarillo) is of the opinion that the court below decided correctly in this (the decision against plaintiff in the suit against the Texas Company is reversed). The contention was made that the Texas company is simply an alter ego of the Missouri corporation, that the latter was, in effect, operating in Texas through the instrumentality of the Texas company. However, one corporation was organized in Texas and the other in Missouri; the two had different officers except in the case of the vice-president, who had an office in Dallas as vice-president of the Texas company and an office in Kansas City, as vice-president of the Missouri company; different stockholders, generally; each had its board of directors directing its particular affairs. No testimony to show that the Missouri corporation had a permit to do business in Texas or that it was engaged in business there; and nothing to show that it had organized the Texas company or was operating in its name or had control of it. And so, service on the Missouri company at the principal place of business of the Texas company in Dallas was without effect. *Hamor et ux. v. Commerce Farm Credit Co. et al.*, 74 S. W. (2d) 1035. Oxford & Kay, of Plainview, and B. H. Oxford, of Mission, for appellants. Terrell, Davis, Hall & Clemens, of San Antonio, for appellees.

Taxation

California.

Bank and Corporation Franchise Act of 1929 upheld. The California constitution provides for the imposition of an annual franchise tax on all financial, mercantile, manufacturing and business corporations, such tax to be at the rate of 4% measured by net income; the tax to be subject to offset in the amount of personal property taxes, such offset not to exceed 90% of the franchise tax; the Legislature is authorized to "change by law the rates of tax, or the percentage, amount or nature of offset." By the Act of 1929 (in 1933 a somewhat different method of equalizing the tax burden was adopted by the Legislature) in addition to the offset of personal property taxes, a 10% offset of real estate taxes was authorized the total allowed offset being limited to 75% of the franchise tax. The controversy here had its inception in the insistence of the taxing authorities that taxes on certain of the taxpayer's leases were real estate taxes rather than personal property taxes. However, both the constitutional provision and the taxing act were assailed as being violative of the "equal protection of the laws" and "due process of law" clauses of the Federal Constitution, and the Act as being

in violation of certain provisions of the State Constitution. A three-judge court, (United States District Court, N. D. California, S. D.) after saying that "it is the fair effect of the decisions in California that oil and gas leases, mining and other leases are real estate and that the taxes paid on them are real property taxes" upholds the act against all contentions contra, and also finds that "the contention that section 32 of the Bank and Corporation Franchise Tax Act does not provide for forfeiture of the right to do business in the state because of a failure to pay a deficiency (as well as the franchise tax or any part thereof) is without merit." In order to afford plaintiff an opportunity to pay the tax and avoid a forfeiture the temporary restraining order is continued in effect for 10 days. *Barnsdall Oil Co. of California v. Merriam, Governor of California, et al.*, 8 F. Supp. 185. Edward J. Vaughn, Thomas J. Casey, Arthur R. Smiley, Frederick D. Anderson, and Bertram L. Linz, all of Los Angeles, and F. Eldred Boland, of San Francisco, for plaintiff. U. S. Webb, Atty. Gen., and H. H. Linney, Deputy Atty. Gen., for defendants.

Florida.

Discriminatory license fee ordinance. A city ordinance of Quincy, Florida, provides for a license fee of $10 for one who takes or solicits orders for wholesale delivery or who sells at wholesale any bread, rolls, or cake in the city and who maintains an established place of business in the city for the purpose of soliciting or taking such orders or making said sales; and for one who engages in such transactions but has no established place of business in the city, the fee is $50. After saying that "The ordinance can by no reasonable construction be held to be one adopted in the exercise of the police power of the municipality. It is purely a revenue measure", the Supreme Court of Florida, in habeas corpus proceedings, declares the ordinance invalid, finding no "reasonable basis for the discrimination." *Hamilton v. Collins*, 154 So. 201. Waller & Pepper, Charles S. Ansley, and LeRoy Collins, all of Tallahassee, for petitioner. Blake & Taylor, of Quincy, for respondent.

West Virginia.

Registration of motor car bought outside of state on which local consumer's sales tax has not been paid. West Virginia imposes a consumer's sales tax; rate 2%. By the terms of the taxing act the tax is restricted to sales made within the state; the act provides that no registration license shall be issued, in the case of automotive vehicles, unless the tax has been paid (except in the case of renewal licenses). Relator, here, bought an automobile in Virginia. The state road commissioner refused to issue to him a certificate of title and license plates unless the equivalent of the 2% tax were paid. Writ of mandamus sought to compel. The West Virginia Supreme

Court of Appeals directs the issuance of writ. The commissioner did not contend that a consumer's tax can be imposed in the case of a car bought outside the state but did contend that he had the right to exact, in such a case, a tax for the privilege of registering the car in the state, equal in amount to the 2% consumer's tax, additional to the regular license fee, he taking the position that the term "consumer's tax" is improper nomenclature in such an instance. The court finds no authority in the act for the stand taken by the commissioner. *Vaught v. Bailey, State Road Commissioner,* 175 S. E. 783. Richardson, Sanders & Kemper, of Bluefield, for relator. Homer A. Holt, Atty. Gen., and Ira J. Partlow, Asst. Atty. Gen., for respondent.

CORPORATE MEETINGS HELD

During the past few weeks, meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

The Baltimore Post Company
The Wayne Pump Company
Hugo Stinnes Corporation
Hugo Stinnes Industries, Inc.
Benjamin Moore & Company
Press Trading Company
South Porto Rico Sugar Company
City Stores Company
American Austin Car Co., Inc.
R. H. Securities Corporation
Pocono Hotels Corporation
Kelly Gold & Silver Mines, Inc.
Ridgefield Corporation
Central Chemical Company
Nela Alpha Investing Company
Red Bank Oil Co.
Inter-State Realty Corporation
National Paper and Type Company
Dominion Gas and Electric Company
Cone Export and Commission Company
Coca-Cola International Corporation
United Artists Theatre Circuit, Inc.
Atlantic and Pacific Steamship Company

Some Important Matters for January and February

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30).—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January. —Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

DOMINION OF CANADA—Return of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Annual Report and License Fee of foreign finance companies due February 1.—Foreign Corporations engaged in the business of financing sales.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KANSAS—Return of Information at the source due on or before March 1. —Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MASSACHUSETTS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MISSOURI—Return of Information at the Source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW JERSEY—Annual Franchise Tax return due on or before the first Tuesday in February.—Domestic Corporations.

NEW YORK—Annual Franchise Tax Report of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Art. 9 of the Tax Law.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

OKLAHOMA—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Quarterly Gross Income Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Annual Capital Stock Report due before March 1.—Foreign Corporations.

UNITED STATES—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

UTAH—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Quarterly Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

Return of Information at the source due on or before January 31.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

New Deal Laws of Importance to Corporations—Contains complete text of Securities Act of 1933 as amended by Title II of the Securities Exchange Act of 1934, all matters in the original act omitted in the 1934 amendments being set in brackets, and all new matters added by the 1934 amendments being set in italics; complete text of the Securities Exchange Act of 1934; and complete text of the amendment approved June 7, 1934 to the Bankruptcy Act providing for corporate reorganizations.

The New Bankruptcy Law—Contains, first, the eleven-word amendment approved June 18, 1934 to the original amendment to the Bankruptcy Act approved June 7, 1934 (and published in our pamphlet New Deal Laws described above); second, two examples of voluntary petitions for reorganization under the new provisions; and third, two examples of petitions under the new provisions for appointment of trustees (reorganization sought).

The High Cost of Whistles for Corporations—Benjamin Franklin's classic, "The Whistle," here is shown, by the decisions in actual court cases, to have a very pointed application to some of the policies of some business corporations of our own day. A sixteen-page pamphlet for both laymen and lawyers.

Special Report—The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

Amendments to Delaware Corporation Law, 1933. Presents the complete text of the 1933 amendments to Chapter 65 of the Revised Code, all new matters being shown in italics, and repealed matter in brackets, so a complete picture is conveyed of the changes effected, while explanatory comments show the purpose and result of each change.

What Constitutes Doing Business. (Revised to April 15, 1934.) A 198-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages, for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation completely revised to reflect the changes made by the amendments of 1933.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.